

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOE C. WATSON,	§
	§ No. 620, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0911004113
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 18, 2011

Decided: June 17, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 17<sup>th</sup> day of June 2011, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Joe C. Watson, was found guilty of two counts of Attempted Robbery in the First Degree. He was sentenced on the first conviction to 5 years at Level V incarceration and on the second conviction to 10 years at Level V, to be suspended after 5 years for 2 years at Level III probation. This is Watson's direct appeal.

(2) Watson's trial counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review

applicable to the consideration of a motion to withdraw and an accompanying brief pursuant to Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>1</sup>

(3) Watson's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Watson's counsel informed him of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Watson also was informed of his right to supplement his attorney's presentation. Watson responded with a brief that raises several issues for this Court's consideration. The State has responded to the position taken by Watson's counsel as well as the issues raised by Watson and has moved to affirm the Superior Court's judgment.

(4) Watson raises several issues for this Court's consideration, which may fairly be summarized as follows: a) his trial attorney failed to

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<sup>1</sup> *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

follow his instructions for questioning the prosecution witnesses; b) the police failed to process evidence that would have exonerated him; and c) his convictions should be reversed because he is innocent.

(5) The evidence presented at trial established the following. At approximately 8:50 p.m. on October 29, 2009, a man entered the Payless Shoe Store in the University Plaza Shopping Center near Newark, Delaware. Katy Kelly<sup>2</sup> was the cashier at the front counter. She told the man that it was closing time and he had only five minutes to shop. After several minutes, the man brought a shoe box to the counter. As Kelly was ringing up the transaction, the man tapped on the box and pointed to a note containing the word “gun.” Kelly, believing that she was being robbed, reached for a security alarm button on a chain around her neck. The man told her not to “do it” and tapped his side. Kelly believed the man had a gun. The man then told Kelly to “open the safe.” After she told him she had no money, he ran out of the store. The store manager then called police. Trooper Hassan Greene of the Delaware State Police responded. The man involved in the incident was described as African-American, about 6’5” tall, bearded and wearing a hooded sweatshirt.

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<sup>2</sup> We hereby assign pseudonyms to all victims and witnesses in the case. Supr. Ct. R. 7(d).

(6) On the same night at approximately 9:00 p.m., Betty Boyce, the cashier at the front counter of Happy Harry's Pharmacy in the same shopping center, reported that a man entered the store and asked to use the telephone. After being directed to a telephone with an outside line, the man returned to the counter and asked for a pack of cigarettes. As Boyce turned around to get the cigarettes, the man told her to give him "all the money you have in your drawer." When she refused, he told her he was just joking anyway. But then the man gestured towards the front pocket of his sweatshirt, which Boyce believed contained a weapon. When Boyce again refused to cooperate, the man left the store. Trooper Greene was approached by an employee of Happy Harry's as he was leaving Payless Shoes. He learned that a man matching the description of the suspect who had attempted to rob Payless Shoes had just attempted to rob Happy Harry's.

(7) A few days after the incidents, Detective Sean Duffy of the Delaware State Police showed both Kelly and Boyce photo arrays containing Watson's photograph. They identified Watson as the man who had attempted to rob them. Both Kelly and Boyce also identified Watson in the courtroom at trial. There was no surveillance video from the incident at Payless Shoes, but there was a surveillance video from the incident at Happy Harry's, which was played for the jury at trial. Trooper Greene testified at

trial that no attempt was made to obtain fingerprints from either of the store counters where the incidents had occurred. Detective Duffy obtained a search warrant for Watson's home, but did not recover any items related to the incidents.

(8) Watson's first claim is that his trial attorney failed to follow his instructions for questioning the prosecution witnesses. Watson's claim is essentially a claim that his attorney provided ineffective assistance. This Court will not consider a claim of ineffective assistance of counsel for the first time on direct appeal.<sup>3</sup> Because Watson's claim was not presented to the Superior Court in the first instance, we decline to address it in these proceedings.

(9) Watson's second claim is that the police failed to process evidence that would have exonerated him. Specifically, Watson contends, the police failed to dust for fingerprints on the store counters where the incidents occurred and failed to process a shoe box containing shoes from Payless Shoes at his home that would have proven he had been in that store only once to make a purchase. The record in this case does not support Watson's claim of a faulty investigation on the part of the police. Moreover, to the extent that Watson's claim is that there was insufficient evidence to

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<sup>3</sup> *Duross v. State*, 494 A.2d 1265, 1269 (Del. 1985).

support his convictions, that claim, too, is without merit. In reviewing a claim of insufficiency of the evidence, this Court will uphold a conviction as long as any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could find the defendant guilty beyond a reasonable doubt.<sup>4</sup> The record reflects that there was more than sufficient evidence presented at trial to support Watson's two convictions of Attempted Robbery in the First Degree.<sup>5</sup>

(10) Watson's third, and final, claim is that his convictions should be reversed because he is innocent. We have reviewed the record in this case carefully and can find no support whatsoever for that claim.

(11) The Court has reviewed the record carefully and has concluded that Watson's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Watson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Watson could not raise a meritorious claim in this appeal.

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<sup>4</sup> *Morrissey v. State*, 620 A.2d 207, 214 (Del. 1993).

<sup>5</sup> Del. Code Ann. tit. 11, §§531 and 832(a) (2).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice